



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Third day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP (MD) No.883 of 2021
in
CRL A (MD) No.304 of 2020

VELMURUGAN

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

THE STATE BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DEVAKOTTAI, SIVAGANGAI DISTRICT.
CRIME NO.11 OF 2015

... COMPLAINANT/RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence of Imprisonment for life imposed by the learned Fast Track Mahila Court, Sivagangai District at Sivagangai in Spl.S.C.No.13 of 2015 by the judgment dated on 01/10/2019 and to enlarge the petitioner/appellant on bail, pending disposal of the above said Criminal Appeal.

Prayer in CRL A(MD)No.304 of 2020:

To call for the records and set aside the order of conviction and sentence passed in S.No.13 of 2015 dated 01.10.2019 on the file of the Fast Track Mahila Court, Sivagangai District at Sivagangai and allow this appeal and Acquit the Appellant/Accused from the charge leveled against him.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.T.KUMAR, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-



[Order of the Court was made by **K.KALYANASUNDARAM, J.**]

The sole accused in S.C.No.13 of 2015, on the file of the Fast Track Mahila Court, Sivagangai, was charged for the offence punishable under Section 6 r/w 5(k) of the Protection of Children from Sexual Offences Act, 2012 (in short, POCSO Act) and convicted and sentenced to undergo life imprisonment. Challenging the conviction and sentence, the present appeal has been filed and pending appeal, he seeks suspension of sentence.

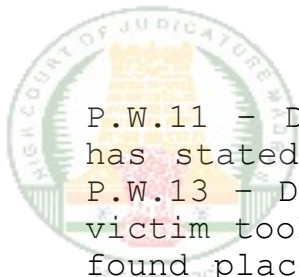
2. The case of the prosecution is that the victim (P.W.3) is the daughter of Amutha and Ramesh, but both of them have passed away. She was under the care and custody of her grandfather Chinna Karuppan (P.W.1). It is the further case of the prosecution that P.W.3 is a mentally retarded 13 years old child and she was studying in Annai Saradha Special School, Devakottai. While the victim came to her house during vacation holidays, on 30.05.2015, at 09.15 a.m. the accused dragged her into an Anganwadi and committed sexual assault on her. Though the prosecution examined in total 15 witnesses, the relatives of the victim have not supported the prosecution case and they have been treated hostile. But, the victim (P.W.3) has spoken about the incident in her evidence. P.W.4 is the Instructor. On appreciation of the evidence adduced by the parties, the Trial Court convicted the accused as stated supra.

3. Mr.T.Kumar, learned counsel appearing for the petitioner, would argue that the accused is an innocent and he has been falsely implicated in this case. According to the learned counsel, except P.Ws.3 and 4, all other witnesses have turned hostile and the charges against the accused have not been proved by the prosecution. It is further contended that admittedly there was no injury on the victim and that since the accused is in judicial custody for more than 17 months, he is entitled to suspension of sentence.

4. Mr.R.Anandharaj, learned Additional Public Prosecutor, appearing for the State would argue that there need not be any injury on the victim. 'Sexual Assault' has been defined in the POCSO Act and a mere touch on the victim with sexual intention would suffice to attract the offence. In the case on hand, the victim has categorically stated about the overt act attributed against the accused and the age of the victim was also proved to be 13 years and hence, the petitioner is not entitled for suspension of sentence.

5. We have carefully considered the rival submissions and perused the materials available on record.

6. In the matter on hand, it is not disputed that the victim has lost her parents and she was under the care and custody of her grandfather (P.W.1). The victim (P.W.3) has categorically deposed that on 30.05.2015, she was sexually harassed by the accused.



P.W.11 - Doctor, who was examined to prove the age of the victim, has stated that the victim would be aged between 12 and 14 years. P.W.13 - Doctor, who examined the victim, has stated that since the victim took bath immediately after the incident, there was no semen found place in her private part. That apart, a cursory perusal of Section 7 of the POCSO Act would show that a mere touch with sexual intention itself would suffice to attract the offence. Hence, considering the evidence of P.Ws.3 and 4, we find no merit in the contentions of the learned counsel for the petitioner and we are of the view that the petitioner is not entitled for suspension of sentence.

7. Accordingly, the criminal miscellaneous petition is dismissed.

sd/-
03/03/2021

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/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

- 1.THE JUDGE,
FAST TRACK MAHILA COURT,
SIVAGANGAI DISTRICT AT SIVAGANGAI.
2. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3.THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DEVAKOTTAI, SIVAGANGAI DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.883 of 2021
in
CRL A(MD)No.304 of 2020
Date :03/03/2021

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AL/CC/BAK-IV (11/03/2021) 3P / 5C